bell v. *Wadsworth*, 248 U. S. 169; *Grayson* v. *Harris*, 267 U. S. 352.

Affirmed.

MR. JUSTICE MCREYNOLDS is of opinion that the challenged judgment should be reversed.

MR. JUSTICE STONE took no part in the consideration or decision of this case.

VALENTINE, CHAIRMAN OF THE IOWA STATE BOARD OF ASSESSMENT AND REVIEW, ET AL. *v.* GREAT ATLANTIC & PACIFIC TEA CO.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

No. 13. Argued October 14, 1936.—Decided November 9, 1936.

Iowa Chain Store Tax Act of 1935, § 4 (b), *held* unconstitutional. *Stewart Dry Goods Co.* v. *Lewis*, 294 U. S. 550.

Mr. Frank F. Messer and *Mr. Edward L. O'Connor*, Attorney General of Iowa, with whom *Mrs. W. E. Wallace* and *John Connolly, Jr.*, were on the brief, for appellants.

Mr. Joseph G. Gamble, with whom *Messrs. Ralph L. Read, Alden B. Howland*, and *Joseph F. Rosenfield* were on the brief, for appellees.

PER CURIAM.

Appellees brought these suits to restrain the enforcement of a statute of Iowa known as the "Chain Store

* Together with No. 14, *Valentine, Chairman, et al.* v. *Graham Department Stores Co. et al.*; and No. 15, *Valentine, Chairman, et al.* v. *Walgreen Co. et al.* Appeals from the District Court of the United States for the Southern District of Iowa.

Tax Act of 1935" (Iowa Code of 1935, c. 329 G–1). The District Court, composed of three judges, held that the provision of § 4 (b) of the statute, imposing a tax based on gross receipts from sales according to an accumulative graduated scale, was invalid under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States as creating an arbitrary discrimination. 12 F. Supp. 760. The case comes here upon direct appeal from a final decree granting a permanent injunction. 28 U. S. C. 380.

The decree is affirmed upon the authority of *Stewart Dry Goods Co.* v. *Lewis,* 294 U. S. 550.

Affirmed.

MR. JUSTICE BRANDEIS and MR. JUSTICE CARDOZO dissent.

MR. JUSTICE STONE took no part in the consideration or decision of this case.

BARWISE ET AL., TRUSTEES, *v.* SHEPPARD, COMPTROLLER OF TEXAS, ET AL.

APPEAL FROM THE COURT OF CIVIL APPEALS, THIRD SUPREME JUDICIAL DISTRICT, OF TEXAS.

No. 10. Argued October 13, 1936.—Decided November 9, 1936.

1. A state excise on the production of oil which extends to the royalty interest of the lessor in the oil produced under an oil lease as well as to the interest of the lessee engaged in the active work of production, the tax being apportioned between these parties according to their respective interests in the common venture, *held* not arbitrary as regards the lessor, but consistent with due process. P. 36.
2. An oil lease imposing on the lessee the obligation of delivering to the credit of the lessor "free of cost" in the pipe line the equal ⅛ part of the oil produced by the lessee, though it may intend that the lessor shall be relieved of all taxes on production, is nevertheless